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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 756

MARGARET B. CARPENTER AND LEROY E. CARPENTER,

Petitioners,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA AND BRIEF IN SUPPORT THEREOF AND MOTION FOR LEAVE TO REFER TO RECORD IN OTHER PROCEEDING IN THIS COURT.

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LEO GALLAGHER,
GROVER JOHNSON,
Of Counsel.

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STATUTES CITED.

California Civil Code:
Sec. 2924 12
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TEXT BOOKS CITED.

4 Calif. Jurisprudence, p. 1022 2
10 Calif. Jurisprudence, p. 515 22

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THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES.

PETITION FOR WRIT OF CERTIORARI.

Your petitioners, Margaret B. Carpenter and Leroy E. Carpenter, respectfully allege:

A.

Summary Statement of Matter Involved.

The petitioners are citizens of the United States, and defendants in a suit in equity brought in the Superior Court of Los Angeles County to foreclose a certain trust deed with respect to certain real property purchased by the peti-

tioners from the plaintiff in that action, Archibald J. Hamilton.[1]

Prior to the commencement of said equitable suit,[2] petitioners had instituted an action in said Superior Court against Hamilton to recover damages for fraudulent representations alleged to have been made to them by said Hamilton in the course of the sale to petitioners of said property.

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[1] The litigation between the petitioners and Hamilton has been before this Court in *Carpenter* v. *Hamilton*, October term, 1940, No. 93. This court, in denying certiorari without opinion (October 21, 1940), did not foreclose itself from considering the merits of the claims of the petitioners, as set forth in the instant petition.

In opposition to the Petition in No. 93, the respondent asserted that a Federal question had not been adequately raised by the petitioners in the then proceedings in the California courts. (Brief of Respondents in Opposition to Petition for Writ of Certiorari, p. 7.) Under the California State practice and law, a judgment void or unauthorized because of denial of a constitutional right may be challenged by a "petition for writ of certiorari" (or review), in the State courts, and may be annulled by the issuance of a writ thereon. (*Fortenbury* v. *Superior Court*, 104 Cal. Dec. 407, decided October 14, 1940); *Cf. Bridges* v. *Superior Court*, 98 Cal. Dec. 341, 354, reprinted at R. 136, 152, in No. 19, October Term, 1940. Under the California law, moreover, the denial of a "constitutional right to be heard in his defense" renders a judgment void. (*McClatchey* v. *Superior Court*, 119 Cal. 413, 416.) As will appear later, this is the precise claim asserted by the petitioners in the instant petition.

On November 15, 1940, petitioners filed with the Supreme Court of California a petition for writ of certiorari, in accordance with the California practice above adverted to (R. 1). On November 25, 1940, the California Supreme Court, without opinion, denied the petition (R. 6). In that petition the petitioners expressly challenged the judgment of the Los Angeles Superior Court against them, decreeing foreclosure of their home, as a deprivation of "property without due process of law as guaranteed to the petitioners by the Fourteenth Amendment to the Constitution of the United States and by Article I, Section 13 of the California Constitution" (R. 4).

The history of the above litigation is not unlike that involving Angelo Herndon, in the course of which this Court first (*Herndon* v. *Georgia*, 295 U. S. 441), dismissed an appeal for want of the proper raising of a Federal question; and, later (*Herndon* v. *Lowrey*, 301 U. S. 242), upon the filing of a petition for writ of *habeas corpus* in the Georgia trial court, allowed an appeal in the *habeas corpus* proceedings, upon the proper raising of the Federal issue, and then voided the original judgment of conviction.

Under the California practice the scope of inquiry on certiorari (or review) and *habeas corpus* is the same. 4 Calif. Jurisprudence, p. 1022.

The trial of said action was by jury and a verdict was rendered in favor of petitioners. Hamilton then moved for judgment notwithstanding the verdict, which motion was denied. Thereafter Hamilton moved for a new trial and it was granted. Without intervening action, Hamilton then appealed from the order denying his said motion for judgment notwithstanding the verdict, to the Second District Court of Appeals of California. Judgment for petitioners was reversed by that Appellate Court and the cause remanded with directions to the said Superior Court to enter judgment notwithstanding the verdict, in favor of said Hamilton,[3] which judgment was accordingly entered. The order for a new trial as to all the issues was not set aside, but was affirmed by that Appellate Court in the same decision (R. 45).

In the foreclosure proceeding petitioners interposed an answer to plaintiff Hamilton's complaint setting out as an affirmative defense that certain false and fraudulent representations were made by Hamilton to the petitioners, in the course of the sale of the property;[4] and in effect that

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The attention of the Court is further called to *White* v. *Texas*, Certiorari denied, 308 U. S. 608; Petition for Re-hearing granted, and judgment reversed, 309 U. S. 631, and respondent's Petition for Re-hearing denied, 310 U. S. 530.

[2] The facts are set forth in more complete detail in the Transcript of Record in No. 93. That Record will be hereinafter referred to, and all references will be to that Record unless otherwise indicated.

[3] The opinion of the District Court of Appeal is reported in *Carpenter* v. *Hamilton*, 13 Cal. App. (2d) 69, and reprinted in R. 38, in No. 92, October term, 1940.

[4] The precise representations, and the particular manner in which they were false and fraudulent are set forth in petitioners' third separate defense in the petitioners' answer to plaintiff Hamilton's complaint, and appear at R. 10, in No. 93, *supra*. These representations are adequately summarized by the District Court of Appeals (at R. 38, in No. 93):

> "Plaintiffs (petitioners) testified * to the following principal representations, which they claim to have believed and relied upon in making purchase of a residence located in the city of Los Angeles; that the house and garage buildings were in good condition and were

the plaintiff, a suitor in a court of equity, was guilty of unclean hands because of the misrepresentations made by him; and hence barred from relief in a court of equity and good conscience.

At the trial of said foreclosure proceeding the court admitted into evidence the judgment roll in the previous action for damages for fraud (R. 27) and denied petitioners' proffer of proof that the plaintiff had been guilty of fraud as set forth in their said affirmative defense (R. 27, 28). Said denial was upon the ground that the matters sought to be introduced in evidence had been previously adjudicated in the former common law action for damages for fraud (R. 28).

Judgment of foreclosure was thereupon entered against petitioners and in favor of said Hamilton (R. 23). An appeal from said judgment was taken by petitioners to the Supreme Court of California and the said court affirmed said judgment.[5]

The federal constitutional question raised by this petition for a writ of certiorari is whether the petitioners have

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not in need of paint or repair work of any kind; that the walls were in good condition; that the floors were absolutely level; that the house had a new roof of redwood shingles, and that the garage also had a new roof. Other statements made were mere expressions of opinion and need not be enumerated. The evidence disclosed that the floors were not level; that the foundation on three sides of the house had sunk, causing a sinking of portions of the floors in the dining room, breakfast room, play room, maid's room and garage, as well as numerous cracks in the plaster on the walls. The roof of the house was not new but had been patched with tin shingles, and the garage roof was not new. There were other defects which it is unnecessary to particularize."

* This refers to the first suit, *Carpenter* v. *Hamilton*. In the second proceeding, which resulted in a judgment against the petitioners which the petitioners challenge in the instant proceedings, the petitioners were not permitted to introduce any such evidence. And that is the burden of petitioners' grievance.

[5] The opinion of the Supreme Court of California is reported in 99 Cal. Dec. 129 and set forth at R. 46, in No. 93.

been deprived of their property without due process of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

More precisely the question is whether the refusal of the trial court (which refusal was affirmed by the Supreme Court of California) to allow the introduction of evidence, proffered by the petitioners, to the effect that the plaintiff in said equitable action was guilty of misrepresentation and fraud, and hence of "unclean hands," constitutes a denial, in effect, of a hearing, and, accordingly, a deprivation of property without due process of law.

The rejection of such evidence by the California courts was pursuant to their construction of, and application by them of the doctrine of *res adjudicata*.

Whether the misapplication of the doctrine of *res adjudicata* by the California courts, as claimed by the petitioners, is such as to abridge "the rudimentary demands of justice",[6] and hence offend against Federal due process is the Federal constitutional issue posed by the instant petition.[7]

B.

Reason Relied on for Allowance of Writ.

The refusal of the California courts to permit the petitioners to assert and prove their defense to the action, namely, that Hamilton, the plaintiff in said action, had made false and fraudulent representations in the course of the sale of the property to the petitioners, and hence was guilty of "unclean hands", constituted, in effect, a denial to the petitioners of a right to a hearing; and thus, in turn, an abridgment of Federal due process. The judgment of foreclosure by the California courts, taking their home away

[6] From *Mooney* v. *Holohan* (1934), 294 U. S. 103.

[7] *Cf. Hansberry* v. *Lee*, Oct. term, 1940, November 12, 1940, 310 U. S. —.

from the petitioners, under the circumstances indicated, constitutes a deprivation of the property of the petitioners, without such due process.

Nor does the repetition of the phrase *res adjudicata* by the State courts below, as the justification for the denial of that right to a hearing required by due process, meet the requirements of the Federal Constitution.

When the doctrine of *res adjudicata* is applied by a State court, and is interposed as a defense to a claim that the State court judgment violates Federal constitutional rights, this Court will review the course of procedure in the State courts in order to determine whether such course squares with the basic concepts of Federal due process.[8]

Such a review,[9] we believe, will bring this Court to the conclusion that the judgment below is at fatal variance from the requirements of Federal due process.

WHEREFORE, petitioners pray that this Court issue a Writ of Certiorari to review the judgment of the Supreme Court of the State of California.

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[8] *Cf. Hansberry* v. *Lee, supra.*

[9] The course of proceedings in the State courts below will be reviewed in petitioners' Brief in Support of Petition for Writ of Certiorari, *infra*, p. 9.